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Douglas D. Boom
Appl. No. 09/886,975***Remarks***

Reconsideration of this Application is respectfully requested. The Specification has been amended to correct grammatical and typographical errors. Upon entry of the foregoing Amendment to the Claims, claims 1-45 are pending in the application, of which claims 1, 14, 22, 32, and 40 are independent. By the foregoing Amendment, claims 1-14, 17, 19, 21, 22, 25, 27, and 29 are sought to be amended. Claims 30-45 are sought to be added. No new matter is embraced by this amendment and its entry is respectfully requested. Based on the above Amendment and the remarks set forth below, it is respectfully requested that the Examiner reconsider and withdraw all outstanding objections and rejections.

Claim Objections

The Examiner, on page 2 of the Office Action, has objected to claims 10-13, 17, 19, 21, 25, 27, and 29 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant would like to thank the Examiner for the indication of allowable subject matter. Applicant respectfully believes that the base claims are allowable over the cited art. Thus, at this time, Applicant has not amended the base claims to include the allowable subject matter indicated in claims 10-13, 17, 19, 21, 25, 27, and 29. Applicant respectfully reserves the right to amend the base claims in the future to include the allowable subject matter if deemed necessary to bring the case to allowance.

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Appl. No. 09/886,975***Rejection under 35 U.S.C. § 102***

The Examiner, on page 2 of the Office Action, has rejected claims 1, 14, and 22 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,725,378 to Schuba *et al.* (hereinafter "Schuba"). Applicant respectfully traverses this rejection. Based on the remarks set forth below, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

To anticipate a claim of a pending application, a single reference must disclose each and every element of the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1397 (Fed. Cir. 1986). The exclusion of a claimed element from the single source is enough to negate anticipation by that reference. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984).

With reference to independent claim 1, the Examiner states that Schuba teaches Applicant's invention. Applicant respectfully disagrees. With regards to independent claim 1, Schuba does not teach or suggest every element of Applicant's claimed invention. For example, Schuba does not teach or suggest Applicant's claimed elements of:

a transmit module to receive outgoing packets from a software application and to discard the outgoing packets that are determined to be from a zombie application prior to being transmitted over a network; and
a monitor module in communications with the *transmit module* and the receive module to track *transmit packet patterns* from and receive packet patterns to the software application and to determine whether the software application is the zombie application based upon the *transmit* and receive packet patterns.

Unlike the present invention, Schuba does not teach a transmit module to receive outgoing packets from a software application and discard the outgoing packets

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determined to be from a zombie application prior to being transmitted over a network. Schuba also does not teach or suggest a monitor module in communications with the *transmit module ... to track transmit packet patterns* from ... the software application and to determine whether the software application is the zombie application based upon the *transmit ... packet patterns*. To the contrary, Schuba teaches detection and examination of TCP packets at the destination host. Thus, unlike the present invention, which monitors the outgoing packets at the source and discards the outgoing packets that are determined to be from a zombie application prior to being transmitted over a network, Schuba teaches that the TCP packets are tested after they are received by the destination host.

With reference to independent claims 14 and 22, the Examiner states that Schuba teaches Applicant's invention. Applicant respectfully disagrees. With regards to independent claims 14 and 22, Schuba does not teach or suggest every element of Applicant's claimed invention. For example, Schuba does not teach or suggest Applicant's claimed elements of:

monitoring incoming and outgoing packets to and from a software application;

placing the software application on a zombie list or a watch list when a pattern of the incoming or outgoing packets to or from the software application matches that of the characteristics of a zombie application; and

blocking reception and transmission of packets to and from the software application when the software application has been placed on the watch list or the zombie list in a previous cycle and the software application further exhibits the characteristics of a zombie application.

As indicated above, Schuba does not teach or suggest *monitoring ... outgoing packets ... from a software application*, placing the software application on a zombie list

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or a watch list *when a pattern of the ... outgoing packets from the software application matches that of the characteristics of a zombie application, or blocking ... transmission of packets ... from the software application when the software application has been placed on the watch list or the zombie list in a previous cycle and the software application further exhibits the characteristics of a zombie application.* Instead, Schuba teaches examination and detection of TCP packets on the destination hosts or target destination, not the source. Thus, with Schuba, a zombie application would be blocked at the destination host after being sent over the network. With the present invention, a zombie application is blocked at the source, thus never being sent over the network to the target destination.

Thus, for at least the foregoing reasons, Applicant respectfully submits that independent claims 1, 14, and 22, and the claims that depend therefrom (claims 2-13, 15-21, and 23-29, respectively) are not anticipated by Schuba. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of independent claims 1, 14, and 22, and the claims that depend therefrom respectively.

Rejection under 35 U.S.C. § 103

The Examiner, on page 4 of the Office Action, has rejected claims 2-9, 15, 16, 18, 20, 23, 24, 26, and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,725,378 to Schuba *et al.* (hereinafter "Schuba") in view of U.S. Patent No. 6,321,338 to Porras *et al.* (hereinafter "Porras"). Applicant respectfully disagrees. Based on the remarks set forth below, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

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Claims 2-9 depend from independent claim 1, and are patentable over Schuba for at least the reasons stated above. Furthermore, Porras does not teach or suggest the features missing from Schuba. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 2-9.

Claims 15, 16, 18, and 20 depend from independent claim 14, and are patentable over Schuba for at least the reasons stated above. Furthermore, Porras does not teach or suggest the features missing from Schuba. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 15, 16, 18, and 20.

Claims 23, 24, 26, and 28 depend from independent claim 22, and are patentable over Schuba for at least the reasons stated above. Furthermore, Porras does not teach or suggest the features missing from Schuba. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 23, 24, 26, and 28.

New Claims

New claims 30-45 have been added. Claims 30 and 31 depend from independent claim 1, and thus, are patentable over the cited references for at least the reasons stated above. Independent claims 32 and 40 include similar elements of claims 1, 14, and 22, and therefore are also patentable (along with dependent claims 33-39 and 41-45, respectively) over the cited references for at least the reasons stated above.

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Appl. No. 09/886,975**Conclusion**

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all currently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,

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